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2 **BEFORE THE FEDERAL ELECTION COMMISSION**  
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4 )  
5 In the Matter of the Viguerie Company ) MUR 5635  
6 )  
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8 **GENERAL COUNSEL'S BRIEF**  
9

10 **I. INTRODUCTION**

11 The Viguerie Company extended credit to Conservative Leadership Political Action  
12 Committee ("CLPAC" or the "Committee"), providing goods and services to the Committee in  
13 connection with a direct mail fundraising program between July and November 2000.<sup>1</sup> CLPAC  
14 did not pay the Viguerie Company in full and the Viguerie Company forgave the debt, which  
15 totaled \$500,652. In addition, the Viguerie Company paid other corporations a total of \$418,147  
16 for goods and services they provided to CLPAC in connection with the fundraising program. In  
17 connection with that fundraising program, the Commission, on December 14, 2004, found reason  
18 to believe that the Viguerie Company made corporate contributions to CLPAC in violation of 2  
19 U.S.C. § 441b(a). The General Counsel is prepared to recommend that the Commission find  
20 probable cause to believe that the Viguerie Company violated 2 U.S.C. § 441b(a) by making  
21 \$918,799 in prohibited in-kind corporate contributions to CLPAC.

22 The Commission previously found reason to believe that the Viguerie Company and one  
23 of its principals, Richard Viguerie, violated the Federal Election Campaign Act of 1971, as  
24 amended (the "Act"), and admonished them in an earlier Matter Under Review ("MUR")

<sup>1</sup> This matter was generated as a result of the Commission's audit of CLPAC. The Commission approved the Report of the Audit Division on CLPAC on November 18, 2004. The audit, undertaken in accordance with 2 U.S.C. § 438(b), *see* 2 U.S.C. § 437g(a)(2), covered the period January 1, 1999 through December 31, 2000. Thus, all of the facts recounted in this brief occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2000 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 involving similar prohibited corporate contributions. *See* MUR 3841. Accordingly, the General  
2 Counsel is prepared to recommend that the Commission find probable cause to believe that the  
3 Viguerie Company's violation in this matter was knowing and willful.

4 **II. ANALYSIS**

5 **A. Background**

6 The Viguerie Company, incorporated in Virginia, provides services in support of direct  
7 mail programs. It owns American Target Advertising, Inc. ("ATA"), a direct mail marketing  
8 agency, that specializes in fundraising for nonprofit entities. The Viguerie Company was  
9 founded by Richard Viguerie, who retains an ownership interest. Richard Viguerie also serves as  
10 the chairman of ATA and the moderator and commentator on the Internet website,  
11 ConservativeHQ.com, Inc. The Viguerie Company, ATA, and ConservativeHQ.com, Inc. are  
12 thus related through Richard Viguerie; all three extended credit to CLPAC and provided goods  
13 and services to CLPAC in connection with the fundraising program.

14 CLPAC is a small multicandidate political committee that registered with the  
15 Commission in 1972. Its financial activity could be characterized as low to moderate. For  
16 example, total expenditures for the period 1993 through 1999 were \$280,625 and total reported  
17 receipts were \$292,564 -- an average of approximately \$40,000 in receipts and expenditures per  
18 year. Expenditures ranged from \$4,818 in 1993 to \$128,239 in 1998.

19 As of June 30, 2000, CLPAC reported \$464 cash on hand. Six days later, on July 6,  
20 2000, it entered into a contract with ATA (the "Contract") that resulted in a direct mail,  
21 telemarketing and Internet fundraising program to occur in the four months before the 2000  
22 election at a cost of \$8 million. Richard Viguerie signed the Contract, and amendments to the  
23 Contract, for ATA.

1 The Contract, which was styled a "no-risk" contract, provided that ATA would incur all  
2 third-party invoices in its name and that CLPAC would be responsible for the costs of the  
3 fundraising only up to the amount of money raised. In other words, CLPAC was not responsible  
4 for paying any shortfall if the fundraising failed to raise enough money to cover its expenses.

5 ATA engaged a number of third-party vendors to work on the CLPAC fundraising  
6 program. A number of the third-party vendors ATA engaged were entities that were closely-  
7 connected to it. For example, the Viguerie Company rented mailing lists to CLPAC.

8 In the end, the returns were insufficient to pay the bills. A number of the vendors  
9 compromised their claims for payment, accepted partial payment and forgave debt. For its part,  
10 the Viguerie Company wrote off CLPAC bills totaling \$500,652 and paid other third-party  
11 vendors \$418,147.

12 B. The Viguerie Company Made Prohibited Corporate Contributions to CLPAC

13 The Act prohibits corporations from making contributions to political committees,  
14 2 U.S.C. § 441b(a), and defines a contribution as any "direct or indirect payment, distribution,  
15 loan, advance, deposit, or gift of money or any services or anything of value." 2 U.S.C.  
16 § 441b(b)(2).

17 1. The Viguerie Company Was Not Paid in Full for Goods and Services It  
18 Provided to CLPAC and the Viguerie Company Wrote Off the Resulting  
19 Debt.  
20

21 ATA's accounting records show that the Viguerie Company provided CLPAC with  
22 goods and services, including the use of its mailing lists, worth \$524,481. The Viguerie  
23 Company received payments totaling \$23,829 from CLPAC and wrote off the remaining  
24 \$500,652 debt. In doing so, the Viguerie Company made a prohibited corporate contribution.

25 Commission regulations provide that a commercial vendor's extension of credit will not  
26 be considered a contribution so long as it is made in the ordinary course of business and on the

1 same terms as those provided to non-political clients of similar risk and for an obligation of  
2 similar size. 11 C.F.R. §§ 100.7(a)(4) and 116.3(b). In determining whether an extension of  
3 credit was in the ordinary course of business, the Commission considers whether the vendor  
4 followed established procedures and past practices in making the extension of credit, whether the  
5 vendor received prompt payment in full for previous extensions of credit, and whether the  
6 extension of credit conformed to the usual and normal practice in the industry. 11 C.F.R.  
7 § 116.3(c).

8 The regulations further provide that a commercial vendor may forgive, or settle such  
9 extension of credit for less than the full amount owed, if it has treated the debt in a commercially  
10 reasonable manner and complied with the regulatory requirements for forgiving debt. 11 C.F.R.  
11 § 116.4(b). A vendor can demonstrate that it has treated the debt in a commercially reasonable  
12 manner by showing, *inter alia*, that: (1) the original extension of credit was proper; (2) the  
13 committee has engaged in additional fundraising to satisfy the debt, reduced overhead and  
14 administrative costs, or liquidated assets; and (3) that the vendor has pursued its remedies as  
15 vigorously as it would pursue its remedies against a similarly-situated non-political debtor, *i.e.*,  
16 that it has made oral and written requests for payment, withheld delivery of goods or services  
17 until overdue debts are satisfied, imposed additional charges for late payment, referred the debt  
18 to a collection service, or litigated for payment on the debt. 11 C.F.R. § 116.4(d). A creditor  
19 may ask for approval of a plan to forgive or settle a debt from the Commission where the debt  
20 has been outstanding for twenty-four months and the committee does not have sufficient cash to  
21 pay the vendor, has receipts and disbursements of less than \$1,000 during the previous twenty-  
22 four months, and has debts to other creditors of such magnitude that the vendor reasonably  
23 concludes that the committee will not pay the debt owed to the vendor. 11 C.F.R. § 116.8. If a

1 vendor extends credit and fails to make a commercially reasonable attempt to obtain repayment,  
2 a contribution will result. 11 C.F.R. §§ 100.7(a)(4) and 116.4(b)(2).

3 The Viguerie Company did not extend credit to CLPAC in the ordinary course of  
4 business. Its extension of credit exceeded a half a million dollars for a fundraising program  
5 scheduled to run for four months. Such a large extension of credit for such a short-term contract  
6 is not the usual and normal practice in the direct mail industry. While a longstanding  
7 relationship and a history of transactions between a vendor and a committee may justify the  
8 provision of goods and services in advance of payment, the Viguerie Company and CLPAC had  
9 no longstanding relationship. This was the first time the Viguerie Company transacted business  
10 with CLPAC. Thus, the Viguerie Company had not received prompt payment in full from  
11 CLPAC for previous extensions of credit.

12 When CLPAC did not pay off the extension of credit, the Viguerie Company failed to  
13 make commercially reasonable efforts to obtain repayment. *See* 11 C.F.R. § 100.7(a)(4). The  
14 Viguerie Company did not impose additional fees for late payment, did not refer the debt to a  
15 collection service, and did not initiate litigation to collect the debt. *See* 11 C.F.R. § 116.4(d).

16 The Viguerie Company forgave the debt within 24 months. During that 24-month period,  
17 CLPAC had more than \$1,000 in receipts and disbursements. Thus, the debt was not eligible for  
18 forgiveness and the Viguerie Company did not submit a debt settlement plan to the Commission  
19 for review and approval. 11 C.F.R. § 116.8(a). Because the debt was not incurred in the  
20 ordinary course of business, was not treated by the Viguerie Company in a commercially  
21 reasonable fashion, and did not qualify for forgiveness under the applicable regulation, the  
22 Viguerie Company's forgiveness of CLPAC's debt resulted in a contribution by the Viguerie  
23 Company to CLPAC. Thus, there is probable cause to believe that the Viguerie Company  
24 violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to CLPAC.

2. The Viguerie Company Paid Third Party Vendors on CLPAC's Behalf

The Viguerie Company paid other vendors a total of \$418,147 for goods and services the vendors provided in support of the CLPAC direct mail fundraising campaign. By making these payments, the Viguerie Company made indirect payments to CLPAC or gave CLPAC something "of value" and thereby made a prohibited corporate contribution to the Committee. 2 U.S.C. § 441b(a), 11 C.F.R. § 100.7(a)(1)(iii)(A). Thus, there is probable cause to believe that the Viguerie Company violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to CLPAC.

C. The Viguerie Company's Violation Was Knowing and Willful

The Commission previously admonished the Viguerie Company and Richard Viguerie for engaging in conduct substantially similar to the conduct here, both in making corporate contributions and accepting them. Based on their involvement in the previous matter, the General Counsel is prepared to recommend that the Commission find probable cause to believe that the Viguerie Company knowingly and willfully violated the Act by making corporate contributions to CLPAC.

In MUR 3841, the Commission found reason to believe that the Viguerie Company violated 2 U.S.C. § 441b(a) by making corporate contributions to United Conservatives of America, a federal political committee, the chairman of which was Richard Viguerie. The Viguerie Company provided the committee with office space, telephone services and direct mail services. Initially, the committee did not pay for these services. Later, it made some payments, but never paid in full what it owed. The Viguerie Company made no demand for payment, but rather continued to extend credit to the committee, for up to two years. The Commission found that the extension of credit was not in the ordinary course of business and not commercially reasonable. In the end, the Commission sent two admonishment letters. The letter to counsel for

1 Viguerie and Associates' General Counsel, Mark Fitzgibbons, warned: "The Commission  
2 reminds you that your clients' actions of making corporate contributions appear to be violations  
3 of [the Act]. You should take steps to ensure this activity does not occur in the future." Letter  
4 from Peter Blumberg to Mark Fitzgibbons, General Counsel, Viguerie and Associates, dated  
5 April 2, 1997. The letter to Richard Viguerie as chairman of United Conservatives of America  
6 warned: "The Commission reminds you that your actions of accepting corporate contributions  
7 appear to be violations of [the Act]." Letter from Peter Blumberg to Richard Viguerie, dated  
8 April 2, 1997. This letter, too, instructs Richard Viguerie to take steps to ensure the violation  
9 does not recur.

10 The phrase knowing and willful indicates that "actions [were] taken with full knowledge  
11 of all of the facts and a recognition that the action is prohibited by law." H.R. Rpt. 94-917 at 4  
12 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal Election Campaign Act  
13 Amendments of 1976 at 803-4 (Aug. 1977)); see also *National Right to Work Comm. v. FEC*,  
14 716 F.2d 1401, 1403 (D.C. Cir. 1983) (citing *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir.  
15 1980) for the proposition that knowing and willful means "'defiance' or 'knowing, conscious,  
16 and deliberate flaunting' [sic] of the Act"). *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th  
17 Cir. 1990).

18 In light of the fact that the Viguerie Company's and Richard Viguerie's involvement in a  
19 previous MUR addressing substantially similar conduct as in the current MUR, particularly their  
20 receipt of admonishment letters, there is probable cause to believe that the Viguerie Company  
21 knowingly and willfully violated 2 U.S.C. § 441b(a) when it made the prohibited corporate  
22 contributions to CLPAC described above.

**III. RECOMMENDATIONS**

1. Find probable cause to believe that the Viguerie Company violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to Conservative Leadership Political Action Committee.
2. Find probable cause to believe that the Viguerie Company knowingly and willfully violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to Conservative Leadership Political Action Committee.

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